

□

BEFORE THE FLORIDA JUDICIAL QUALIFICATIONS COMMISSION

INQUIRY CONCERNING A JUDGE, NO. 01-244
(Judge Charles W. Cope)

Case No. SC01-2670

/

SPECIAL COUNSEL'S EMERGENCY MOTION

FOR PROTECTIVE ORDER REGARDING EVIDENCE

OF VICTIM'S REPUTATION OR PRIOR SEXUAL ACTIVITIES

The Special Counsel hereby moves on an emergency basis for a protective order prohibiting discovery regarding (1) the reputation of the alleged victim in this case (the "Daughter"), (2) any intimate relationships between the Daughter and persons other than Judge Cope except to the limited extent such relationships were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, (3) any details about any abortions the Daughter may have had except to the limited extent such abortions were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, and (4) any occasion in which the Daughter was raped or otherwise sexually abused. In support thereof, the Special Counsel states:

1. The background and basis for this motion is largely detailed in Special Counsel's In Limine Motion to Exclude Evidence of Victim's Reputation or Prior Sexual Activities (the "Motion In Limine"), which is incorporated herein. A copy of this motion is attached hereto as **Exhibit A**.

2. At a telephone hearing, the Chair orally reserved ruling on the Motion in Limine.

3. Since this ruling, Judge Cope has set at least six depositions that appear to be

designed to seek discovery of evidence subject to the Motion in Limine. Specifically, he has set the following depositions:

Service Date	Deponent	Location	Deposition Date
6/7/02	Tara Trumler	Nebraska	6/12/02
6/6/02	Thomas McCann, Jr.	Maryland	6/18/02
6/6/02	Stephen R. Hance	Oklahoma	6/19/02
6/6/02	Gary L. Wright, M.D.	California	6/19/02
6/6/02	Bonnie Sue Barr	Kentucky	6/20/02
6/6/02	Daniel Meagher	Kentucky	6/20/02

4. Thomas McCann, Jr., is the former husband of the Daughter's mother (he is not her father). On information and belief, Mr. McCann was not present in California where the alleged misconduct took place, was divorced from the Daughter's mother before the alleged misconduct took place, has not spoken with the Daughter since the alleged misconduct took place, and has no information relevant to this case.

5. Stephen R. Hance is a former boyfriend of the Daughter. On information and belief, Mr. Hance was not present in Carmel-by-the-Sea, California where the alleged misconduct took place, has not spoken with the Daughter since the alleged misconduct took place, and has no information relevant to this case.

6. Gary L. Wright is a dermatologist who once saw the Daughter in California prior to the alleged misconduct. On information and belief, Dr. Wright was not present in Carmel-by-the-Sea, California where the alleged misconduct took place, has not spoken with the Daughter since the alleged misconduct took place, and has no information relevant to this case.

7. Bonnie Sue Barr is a former fellow intern with the Daughter from her days in veterinary school in Kentucky. On information and belief, Ms. Barr was not present in

California where the alleged misconduct took place, has not spoken with the Daughter since the alleged misconduct took place, and has no information relevant to this case.

8. Daniel Meagher is a former boyfriend of the Daughter. On information and belief, Mr. Meagher was not present in Carmel-by-the-Sea, California where the alleged misconduct took place and has little if any information relevant to this case. Apparently, Mr. Meagher did speak with the Daughter after the incidents in Carmel-by-the-Sea, California. Accordingly, to the extent (and only to the extent) the questioning is limited to this issue, the Special Counsel has no objection to Mr. Meagher being deposed.

9. Tara Trumbler is the ex-wife of Mr. Meagher. On information and belief, Ms. Trumbler was not present in Carmel-by-the-Sea, California where the alleged misconduct took place and has little if any information relevant to this case. Apparently, Ms. Trumbler spoke to the Daughter after the incidents in California, but not about those incidents.

10. Except to the limited extent noted above with regard to Mr. Meagher, none of these witnesses have any testimony that is relevant to any issue in this case or is reasonably calculated to lead to the discovery of admissible evidence. Therefore, this discovery is beyond the permissible scope outlined in Rule 1.280(b)(1), Florida Rules of Civil Procedure.

11. Moreover, for the reasons stated in Special Counsels motion in limine, the requested protective order is necessary to protect the Daughter from annoyance, embarrassment, and oppression.

Emergency Nature of Motion

12. The first of the subject depositions was set unilaterally by Judge Cope's counsel

for this Wednesday, June 12, 2002 at 3:00 p.m. The Special Counsel was not served with the notice of this deposition until 2:58 p.m. on Friday, June 6, 2002. The Special Counsel therefore requests an emergency telephone hearing prior to 3:00 p.m. on June 12, 2002.

WHEREFORE, the Special Counsel hereby moves for a protective order prohibiting discovery regarding (1) the Daughter's reputation, (2) any intimate relationships between the Daughter and persons other than Judge Cope except to the limited extent such relationships were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, (3) any details about any abortions the Daughter may have had except to the limited extent such abortions were disclosed to Judge Cope or in Judge Cope's presence in Carmel-by-the-Sea, California in April 2000, and (4) any occasion in which the Daughter was raped or otherwise sexually abused. The Special Counsel further requests an emergency hearing.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by facsimile and regular U.S. mail to: **Robert W. Merkle, Jr., Esq.**, Co-Counsel for Respondent, 5510 W. La Salle Street, #300, Tampa, Florida 33607-1713; **Judge James R. Jorgenson**, Chair of the Judicial Qualifications Commission Hearing Panel, 3rd District Court of Appeal, 2001 S.W. 117th Ave., Miami, Florida 33175-1716; **John Beranek, Esq.**, Counsel to the Hearing Panel of the Judicial Qualifications Commission, P.O. Box 391, Tallahassee, Florida 32301; **Brooke S. Kennerly**, Executive Director of the Florida Judicial Qualifications Commission, 1110 Thomasville Road, Tallahassee, Florida 32303; **Thomas C. MacDonald, Jr., Esq.**, General Counsel to the Investigative Panel of the Judicial Qualifications Commission, 100 North Tampa Street, Suite 2100, Tampa, Florida 33602 this 10th day of June, 2002.

By:
John S. Mills, Esq.
Florida Bar No. 0107719

Special Counsel
Florida Judicial Qualifications Commission
Foley & Lardner
200 Laura Street
Jacksonville, Florida 32201-0240
(904) 359-2000 Telephone